

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jean Paul Lozada	Team: Squad #2	CCRB Case #: 201809123	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 10/24/2018 11:27 AM	Location of Incident: § 87(2)(b)	Precinct: 113	18 Mo. SOL 4/24/2020	EO SOL 12/9/2020	
Date/Time CV Reported Wed, 10/24/2018 3:50 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 11/01/2018 11:02 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Justin Dambinskas	3439	943130	113 PCT
2. POM Frank Gagnon	19242	958610	113 PCT
3. POM Jhoan Lozano	04388	964624	113 PCT
4. POM Damien Lombardo	08867	957778	113 PCT
5. An officer			113 PCT
6. POM Louis Wirth	23883	958173	113 PCT
7. POM Richard Miqueli	02245	960948	113 PCT
8. POM Manuel Goico	01530	959661	113 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Johncarlo Clancy	01788	964997	113 PCT
2. POM Justin Cooksey	06585	964455	113 PCT
3. POM Joseph Bracco	19949	958325	113 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Frank Gagnon	Abuse: Police Officer Frank Gagnon threatened to seize § 87(2)(b)'s property.	§ 87(2)(b)
B.POM Jhoan Lozano	Abuse: Police Officer Jhoan Lozano threatened to seize § 87(2)(b)'s property.	§ 87(2)(b)
C.POM Jhoan Lozano	Abuse: Police Officer Jhoan Lozano frisked § 87(2)(b)	§ 87(2)(b)
D.POM Jhoan Lozano	Abuse: Police Officer Jhoan Lozano entered § 87(2)(b) in Queens.	§ 87(2)(b)
E.POM Frank Gagnon	Abuse: Police Officer Frank Gagnon entered § 87(2)(b) in Queens.	§ 87(2)(b)
F.POM Frank Gagnon	Force: Police Officer Frank Gagnon used physical force against § 87(2)(b)	§ 87(2)(b)
G.POM Jhoan Lozano	Force: Police Officer Jhoan Lozano used physical force against § 87(2)(b)	§ 87(2)(b)
H.POM Frank Gagnon	Force: Police Officer Frank Gagnon used a Taser against § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
I.POM Jhoan Lozano	Discourtesy: Police Officer Jhoan Lozano spoke discourteously to § 87(2)(b)	
J.POM Louis Wirth	Force: Police Officer Louis Wirth used physical force against § 87(2)(b)	
K.POM Damien Lombardo	Force: Police Officer Damien Lombardo used physical force against § 87(2)(b)	
L.POM Richard Miqueli	Force: Police Officer Richard Miqueli used physical force against § 87(2)(b)	
M.POM Manuel Goico	Force: Police Officer Manuel Goico used physical force against § 87(2)(b)	
N.SGT Justin Dambinskas	Force: Sergeant Justin Dambinskas used physical force against § 87(2)(b)	
O.POM Damien Lombardo	Force: Police Officer Damien Lombardo used physical force against § 87(2)(b)	
P.SGT Justin Dambinskas	Force: Sergeant Justin Dambinskas used a chokehold against § 87(2)(b)	
Q.SGT Justin Dambinskas	Force: Sergeant Justin Dambinskas restricted § 87(2)(b)'s breathing.	
R. An officer	Off. Language: An officer made remarks to § 87(2)(b) based upon race.	
S.SGT Justin Dambinskas	Discourtesy: Sergeant Justin Dambinskas spoke discourteously to § 87(2)(b)	
T.SGT Justin Dambinskas	Abuse: Sergeant Justin Dambinskas threatened § 87(2)(b) with the use of force.	
U.SGT Justin Dambinskas	Force: Sergeant Justin Dambinskas used physical force against § 87(2)(b)	
V.POM Damien Lombardo	Discourtesy: Police Officer Damien Lombardo acted discourteously toward § 87(2)(b)	

Case Summary

On October 24, 2018, § 87(2)(b) filed this complaint on behalf of herself and her husband, § 87(2)(b) with the Internal Affairs Bureau via telephone, generating IAB Log #2018-42378 (Board Review 01). IAB referred this complaint to the CCRB, where it was received on November 1, 2018. This case was reassigned from Investigator Frank Montgoris to Supervising Investigator Jean-Paul Lozada on April 11, 2019.

On October 24, 2018, at approximately 11:27 a.m., § 87(2)(b) was riding his electric scooter in the vicinity of Sutphin Boulevard in Queens when Police Officer Frank Gagnon and Police Officer Jhoan Lozano of the 113th Precinct attempted to pull him over for operating an illegal motorized scooter in a reckless manner. § 87(2)(b) continued riding to his residence at § 87(2)(b) in Queens (§ 87(2)(b) unit), entered his residence, and closed the door behind him. Police Officer Gagnon and Police Officer Lozano told § 87(2)(b) that they would take his scooter if he did not come downstairs (**Allegations A and B – Abuse of Authority: Threat to Seize Property**, § 87(2)(g) § 87(2)(b) then exited the building. Police Officer Lozano frisked § 87(2)(b) on the stoop outside the building (**Allegation C – Abuse of Authority: Frisk**, § 87(2)(g) and then the officers told § 87(2)(b) that he was under arrest. § 87(2)(b) fled into his residence, and Police Officer Lozano and Police Officer Gagnon entered behind § 87(2)(b) (**Allegations D and E – Abuse of Authority: Entry of Premises**, § 87(2)(g) § 87(2)(g)

A physical struggle between § 87(2)(b) and the officers ensued on the stairs that ascend from the front door to the second floor. Police Officer Gagnon and Police Officer Lozano punched § 87(2)(b) (**Allegations F and G – Force: Physical Force**, § 87(2)(g) and Police Officer Gagnon tased § 87(2)(b) (**Allegation H – Force: Nonlethal Restraining Device**, § 87(2)(g) The struggle moved outside, where he was allegedly punched and kicked by Police Officer Gagnon, Police Officer Lozano, Police Officer Louis Wirth, Police Officer Damien Lombardo, Police Officer Richard Miqueli, and Police Officer Manuel Goico of the 113th Precinct (**Allegations F, G, J, K, L, and M – Force: Physical Force**, § 87(2)(g) § 87(2)(b) stood at the bottom of the stoop, and Sergeant Justin Dambinskas of the 113th Precinct pushed her out of his way as he ran up the stoop (**Allegation N – Force: Physical Force**, § 87(2)(g) § 87(2)(b) attempted to stop the physical altercation between § 87(2)(b) and the officers, and Police Officer Lombardo allegedly punched § 87(2)(b) in her face (**Allegation O – Force: Physical Force**, § 87(2)(g) § 87(2)(g)

The officers handcuffed § 87(2)(b) on the stoop. While the officers were bringing § 87(2)(b) to a police vehicle, Sergeant Dambinskas allegedly grabbed § 87(2)(b)'s neck with one hand (**Allegation P – Force: Chokehold**, § 87(2)(g) restricting his breathing for approximately eight to ten seconds (**Allegation Q – Force: Restricted Breathing**, § 87(2)(g) The officers placed § 87(2)(b) into the back of a police vehicle, and an unidentified officer allegedly said, “Get this nigger out of here” (**Allegation R – Offensive Language: Race**, § 87(2)(g) § 87(2)(b)). Sergeant Dambinskas opened the police vehicle's door and allegedly asked, “Are you going to keep fucking around with us?” (**Allegation S – Discourtesy: Word**, § 87(2)(g) § 87(2)(b) screamed to § 87(2)(b) and Sergeant Dambinskas allegedly said, “If you keep screaming, I’m going to fuck you up” (**within Allegation S; Allegation T – Abuse of Authority: Threat of Force**, § 87(2)(g) § 87(2)(b) banged his head against the window, and Sergeant Dambinskas allegedly punched § 87(2)(b)

him once in his jaw (**Allegation U – Force: Physical Force**, § 87(2)(g) § 87(2)(b) attempted to headbutt Sergeant Dambinskas, who then allegedly punched § 87(2)(b) in his face in ribs (**within Allegation U**). § 87(2)(b) asked Police Officer Lombardo for his name, and Police Officer Lombardo allegedly threw his business card at her face (**Allegation V – Discourtesy: Action**, § 87(2)(g) § 87(2)(b)

§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

Video footage was obtained from the surveillance cameras affixed to the exterior of § 87(2)(b) (IA #183, 184, 185; Board Review 03, 04, 05). § 87(2)(b) provided two videos filmed by § 87(2)(b) (IA #93, 94; Board Review 06, 07) and one video filmed by an unknown neighbor (IA #96, Board Review 08). At the time of the incident, officers from the 113th Precinct had not yet been assigned body-worn cameras.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Frank Gagnon threatened to seize § 87(2)(b) s property.

Allegation (B) Abuse of Authority: Police Officer Jhoan Lozano threatened to seize § 87(2)(b) s property.

§ 87(2)(b) was interviewed on December 27, 2018 (Board Review 09), and he provided a follow-up telephone statement on June 18, 2019 (Board Review 10). § 87(2)(b) scheduled an interview appointment for November 13, 2018, but she failed to appear for this interview appointment and was subsequently uncooperative with rescheduling her appointment or providing a telephone statement. Police Officer Gagnon was interviewed on June 6, 2019 (Board Review 11). Sergeant Dambinskas was interviewed on July 24, 2019 (Board Review 12). Police Officer Miqueli was interviewed on August 13, 2019 (Board Review 13).

It is undisputed that Police Officer Gagnon threatened to seize § 87(2)(b) s electric scooter.

§ 87(2)(b) stated that after he entered his home, the officers asked him to come outside, and that both Police Officer Gagnon and Police Officer Lozano said if he did not come downstairs, they would seize his electric scooter.

§ 87(2)(b) s medical records from § 87(2)(b) (Board Review 14) indicate that § 87(2)(b) stated to hospital personnel that he ran a red light on his electric scooter, and that officers followed him home.

§ 87(2)(b) made no mention of the officers' threat to seize § 87(2)(b) s scooter in her statement to IAB (Board Review 01).

Police Officer Gagnon stated that § 87(2)(b) and § 87(2)(b) began to scream at him from a second-floor window. He denied telling § 87(2)(b) that he would seize the scooter if § 87(2)(b) did not come downstairs. Rather, he simply told § 87(2)(b) that he was going to take the scooter. Police Officer Gagnon made no mention of whether Police Officer Lozano also threatened to seize § 87(2)(b)'s scooter.

A sub-clip of the surveillance footage from § 87(2)(b) (Board Review 27) shows that no license plate is affixed to § 87(2)(b)'s scooter.

Police Officer Johncarlo Clancy of the 113th Precinct vouchered § 87(2)(b)'s scooter as arrest evidence, and the property voucher states that the scooter had no vehicle identification or license plate (Board Review 28). § 87(2)(b)'s charges included reckless driving, aggravated unlicensed operation of a motor vehicle in the third degree, operating a motor vehicle without insurance, and operating an unregistered vehicle (Board Review 02).

Patrol Guide Procedure 209-37 (Board Review 15) states that when an officer takes enforcement action against a motorized scooter pursuant to being operated unlawfully on a New York City street or sidewalk, the officer must seize the motorized scooter.

§ 87(2)(g)

Allegation (C) Abuse of Authority: Police Officer Jhoan Lozano frisked § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Jhoan Lozano entered § 87(2)(b) in Queens.

Allegation (E) Abuse of Authority: Police Officer Frank Gagnon entered § 87(2)(b) in Queens.

It is undisputed that § 87(2)(b) exited § 87(2)(b), that the officers began to effect his arrest outside on the stoop in front of the building, that § 87(2)(b) then fled into § 87(2)(b) and that Police Officer Lozano and Police Officer Gagnon followed him into the building. § 87(2)(b) resides in the § 87(2)(b) unit, and both the § 87(2)(b)

§ 87(2)(b) stated that before he went back inside § 87(2)(b), Police Officer Lozano frisked him and the officers informed him that he was under arrest.

These undisputed facts, and § 87(2)(b)'s statement, are corroborated by the surveillance footage from § 87(2)(b) (Channel 3, Board Review 05). The video begins with Police Officer Lozano and Police Officer Gagnon speaking to § 87(2)(b) on the stoop. At runtime 01:56, § 87(2)(b) steps outside the residence onto the stoop. At runtime 02:00, § 87(2)(b) lifts his arms and Police Officer Lozano starts frisking him. At runtime 02:08, Police Officer Lozano grabs § 87(2)(b)'s left wrist, and § 87(2)(b) enters § 87(2)(b). § 87(2)(b) appears to drag Police Officer Lozano into the residence with him, as Police Officer Lozano does not appear to release his grip on § 87(2)(b). Police Officer Gagnon enters § 87(2)(b) immediately behind § 87(2)(b) and Police Officer Lozano.

Patrol Guide Procedure 208-03 (Board Review 15) requires officers to frisk arrestees.

People v. Skinner (284 A.D.2d 906, 2001, 4th Department) and United States v. Santana (427 U.S. 38, 1976, SCOTUS) state that a defendant cannot defeat an arrest which has been set in motion in a public place by escaping into a private place (Board Review 15).

§ 87(2)(g)

Allegation (F) Force – Police Officer Frank Gagnon used physical force against § 87(2)(b)

Allegation (G) Force – Police Officer Jhoan Lozano used physical force against § 87(2)(b)

Allegation (H) Force – Police Officer Frank Gagnon used a Taser against § 87(2)(b)

Allegation (I) Discourtesy – Police Officer Jhoan Lozano spoke discourteously to § 87(2)(b)

Allegation (J) Force – Police Officer Louis Wirth used physical force against § 87(2)(b)

Allegation (K) Force – Police Officer Damien Lombardo used physical force against § 87(2)(b)

Allegation (L) Force – Police Officer Richard Miqueli used physical force against § 87(2)(b)

Allegation (M) Force – Police Officer Manuel Goico used physical force against § 87(2)(b)

Allegation (N) Force – Sergeant Justin Dambinskas used physical force against § 87(2)(b)

§ 87(2)(b) stated that after he ran inside, he and the officers began “tussling” on the stairs that lead up to his residence. He stated that Police Officer Gagnon punched him once in his lower back, causing them both to fall onto the stairs. Police Officer Gagnon continued to punch § 87(2)(b) while holding one of his arms, but § 87(2)(b) did not recall how many times he was punched. § 87(2)(b) tried to pull his arm away from Police Officer Gagnon. An officer who § 87(2)(b) believed to be Police Officer Lozano then tased § 87(2)(b) in his lower back, and § 87(2)(b) pulled the Taser prongs out of his back. An officer then punched § 87(2)(b) in his face approximately five times, punched him in his left ribcage, and elbowed him in his back, but § 87(2)(b) could not tell which officer(s) did this. As a result of these punches, § 87(2)(b) fell down the stairs. § 87(2)(b) exited the building, and then

approximately six officers punched § 87(2)(b) approximately ten times all over his body on the stoop. § 87(2)(b) and the officers fell to the floor, and the six officers continued to punch and kick him, so § 87(2)(b) began to punch and kick the officers. § 87(2)(b) was handcuffed and placed against a wall, and then Police Officer Miqueli punched him once in the back of the head.

In her statement to IAB (Board Review 01), § 87(2)(b) stated that when § 87(2)(b) opened the front door, Police Officer Lozano and Police Officer Gagnon immediately tried to handcuff him and started to punch him. Police Officer Gagnon tased § 87(2)(b) and Police Officer Lozano tried to pull § 87(2)(b) down the stairs.

The first video filmed by § 87(2)(b) (Board Review 06) shows § 87(2)(b) Police Officer Gagnon, and Police Officer Lozano engaged in a physical struggle on the stairs inside § 87(2)(b). § 87(2)(b) Police Officer Lozano is seen holding § 87(2)(b)'s right wrist and appears to be trying to pull him down the stairs, while Police Officer Gagnon has his right arm wrapped around § 87(2)(b)'s waist. At runtime 00:05, § 87(2)(b) and Police Officer Gagnon fall down the stairs, but Police Officer Gagnon and Police Officer Lozano maintain their holds on § 87(2)(b) for the remainder of the video. The officers repeatedly tell § 87(2)(b) to "get down," and § 87(2)(b) tells the officers to get off of him. At runtime 00:13, § 87(2)(b) raises his right foot and appears to kick Police Officer Lozano in his midsection. At runtime 00:27, an officer says, "Don't fucking bite me," and § 87(2)(b) replies, "Fuck you." This video ends during the struggle on the stairs.

The second video filmed by § 87(2)(b) (Board Review 07) shows Police Officer Gagnon, Police Officer Lozano, Police Officer Wirth, and Police Officer Lombardo surrounding § 87(2)(b) and attempting to handcuff him on the stoop. At 00:01, Police Officer Lozano shouts, "Put your fucking hands behind your back right now," and in response, § 87(2)(b) moves his face forward, screams something unintelligible directly into Police Officer Lozano's face, and calls him a "bitch ass nigger." The officers then place § 87(2)(b)'s chest against a wall and continue to try to handcuff him, but appear to still be struggling with § 87(2)(b). At 00:17, Police Officer Miqueli runs up the stoop and punches § 87(2)(b) in the top of his head three times. This video then ends.

The surveillance footage from § 87(2)(b) (Channel 3, Board Review 05) generally captures the same events as the second video filmed by § 87(2)(b) albeit from another angle. It goes on to show Police Officer Goico and Sergeant Dambinskas arrive at the stoop and assist in the apprehension of § 87(2)(b) although the exact manner in which they do so is unclear because the officers are surrounding § 87(2)(b) and are obstructing the camera's view of his body. The officers appear to push § 87(2)(b) down to the floor on the stoop. § 87(2)(b) is standing directly in front of the bottom of the stoop when Sergeant Dambinskas runs towards it, and Sergeant Dambinskas places his hands on § 87(2)(b)'s sides from behind and pushes her out of his way before he climbs the stoop and approaches § 87(2)(b) and the officers. § 87(2)(b) is handcuffed approximately three minutes after he ran back inside § 87(2)(b). § 87(2)(b) and Sergeant Dambinskas pulls him away from the stoop by his right arm. § 87(2)(b) continues to offer physical resistance by attempting to pull away from Sergeant Dambinskas, and he does not walk to a police vehicle voluntarily.

The video filmed by the unidentified witness (Board Review 08) generally captures the same events as the second video filmed by § 87(2)(b) and the Channel 3 surveillance footage.

§ 87(2)(b)'s medical records from § 87(2)(b) (Board Review 14) indicate that § 87(2)(b) complained of pain to his hand, wrist, right knee, left ankle, and abdomen, an unspecified head injury, and an unspecified pre-existing injury to his lower back. Swelling was observed on § 87(2)(b)'s left hand, and he was diagnosed with a sprained left wrist and lower back. No fractures or dislocations were found, and no additional injuries are noted.

Police Officer Gagnon stated that before § 87(2)(b) exited the building, he came to the door holding a large metal hammer, but he eventually put the hammer down after the officers ordered him to do so numerous times. After § 87(2)(b) fled into § 87(2)(b), he offered resistance by “flailing” his arms and punching and kicking him and Police Officer Lozano. While they attempted to handcuff § 87(2)(b) he used his feet to “propel” himself off the staircase, and all three of them fell down the stairs. Police Officer Gagnon stated that he continuously made physical contact with § 87(2)(b) because he was under arrest and therefore could not let him go. § 87(2)(b) began climbing the staircase again and began punching Police Officer Lozano. Police Officer Gagnon yelled, “Taser, Taser,” but § 87(2)(b) did not cease his resistance. Police Officer Gagnon then fired the Taser into § 87(2)(b)'s back and deployed one five-second Taser cycle, but the Taser was ineffective at subduing § 87(2)(b). § 87(2)(b) pushed off the staircase again, and he, Police Officer Gagnon, and Police Officer Lozano fell down the stairs a second time. At some point on the staircase, Police Officer Gagnon was behind § 87(2)(b) and § 87(2)(b) “threw his head back into [Police Officer Gagnon's] head,” resulting in a bloody nose and bruising around his eyes. § 87(2)(b) punched and kicked Police Officer Gagnon and Police Officer Lozano multiple times throughout their bodies, throughout the entire time on the staircase. Police Officer Gagnon punched § 87(2)(b) throughout his upper body, but he did not recall when he did so, how many times he punched § 87(2)(b) or whether he punched § 87(2)(b) in his face. § 87(2)(b) began climbing the stairs a third time, at which point additional units began to arrive. Police Officer Lombardo and Police Officer Wirth entered § 87(2)(b) and began to “peel § 87(2)(b) off of [Police Officer Gagnon and Police Officer Lozano].” The officers started to gain control of § 87(2)(b) and Police Officer Gagnon and Police Officer Lozano assisted in handcuffing § 87(2)(b) near the bottom of the staircase, but they were unable to handcuff § 87(2)(b) until approximately eight officers arrived at the scene. § 87(2)(b) did not cease his resistance before being handcuffed. After watching the first video filmed by § 87(2)(b) Police Officer Gagnon identified the officer who said “Don’t fucking bite me” as Police Officer Lozano. Police Officer Gagnon did not see any other officer punch § 87(2)(b). He denied kicking § 87(2)(b) and did not recall whether any other officer did so, and he denied deliberately elbowing § 87(2)(b).

Police Officer Gagnon’s account of his physical struggle with § 87(2)(b) is generally consistent with the information he provided in his Threat, Resistance, and Injury (TRI) Worksheet (Board Review 16).

Police Officer Lozano’s TRI Worksheet (Board Review 17) indicates that § 87(2)(b) used hand strikes, foot strikes, pushing/shoving, wrestling/grappling, and a headbutt against the officers, and that § 87(2)(b) brandished a weapon but did not use it. Police Officer Lozano

indicated that he used hand strikes, a forcible takedown, and wrestling/grappling against § 87(2)(b). He cited his reasons for using this force as defense of self and other officers, overcoming resistance and aggression, and because § 87(2)(b) was armed with a weapon.

Police Officer Wirth's TRI Worksheet (Board Review 18) and Police Officer Lombardo's TRI Worksheet (Board Review 19) are generally consistent with one another. They both note that § 87(2)(b) pushed/shoved, wrestled/grappled with, and used a foot strike against officers, and that they used a forcible takedown. Police Officer Lombardo wrote that he "grappled § 87(2)(b)s] legs for forcible takedown," and Police Officer Wirth wrote that he "grappled § 87(2)(b)s] left arm behind his back."

Police Officer Miqueli stated that when he arrived, Police Officer Gagnon, Police Officer Lozano, Police Officer Wirth, and Police Officer Lombardo were attempting to handcuff § 87(2)(b) on the stoop and had placed § 87(2)(b) against a wall. One of § 87(2)(b)s arms had already been handcuffed, but § 87(2)(b) "flailed" his arms by shaking them about and attempted to headbutt one of the officers. The loose handcuff was swinging, and Police Officer Miqueli believed § 87(2)(b) could use it as a weapon. Police Officer Miqueli tried to grab § 87(2)(b)s handcuffed arm, but he was unsuccessful. Police Officer Miqueli then punched § 87(2)(b) in his face twice, and then the officers were able to handcuff § 87(2)(b). Police Officer Miqueli believed § 87(2)(b) kicked an officer while he was being taken to a police vehicle, and that he lifted § 87(2)(b) off the ground in order to place him in the vehicle.

Police Officer Miqueli's TRI Worksheet (Board Review 20) is generally consistent with his account of his physical struggle with § 87(2)(b) but it also notes that a forcible takedown was used against § 87(2)(b) and Police Officer Miqueli stated that he checked this box to indicate that § 87(2)(b) was placed against the wall.

Sergeant Dambinskas stated that when he arrived at § 87(2)(b), he saw approximately four officers "wrestling" and "grappling" with § 87(2)(b) on the stoop. § 87(2)(b) was on the floor, and an officer may have been under § 87(2)(b). Sergeant Dambinskas did not recall § 87(2)(b) punching, kicking, or biting anyone in his presence. He may have assisted the officers in handcuffing § 87(2)(b) but he was not sure. Sergeant Dambinskas was unaware of any force being used against § 87(2)(b) after he was handcuffed. Sergeant Dambinskas denied punching § 87(2)(b) and did not see any other officer do so. Sergeant Dambinskas initially denied pushing § 87(2)(b) but after watching the Channel 3 surveillance footage from § 87(2)(b), he said he did so to keep her away from § 87(2)(b) and the other officers to preserve everyone's safety.

According to Police Officer Gagnon's Line-of-Duty Injury Report (Board Review 21), Police Officer Gagnon was treated at § 87(2)(b), where he was diagnosed with pain, contusions, and bruising to his nose, head, and left leg, as well as a concussion.

According to Police Officer Lozano's Line-of-Duty Injury Report (Board Review 22), Police Officer Lozano was also treated at § 87(2)(b), where he was diagnosed with pain to his left arm and the left side of his hip, and an articular cartilage injury to his left knee.

Patrol Guide Procedure 221-01 (Board Review 15) allows officers to use force when it is reasonable to ensure the safety of a member of the service, or when it is reasonable to place a person in custody. Factors to be considered in determining whether the use of force is reasonable include the following: the nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject; members of service or bystanders; whether the subject is actively resisting custody; whether the subject is attempting evade arrest by flight; the number of subjects in comparison to the number of members of service; size, age and condition of the subject in comparison to the member of service; subject's violent history if known; presence of hostile crowd or agitators; and whether the subject is apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase likelihood of violence.

Patrol Guide Procedure 221-08 (Board Review 15) states, "A Conducted Electrical Weapon (CEW) can be an effective means of subduing aggressive suspects emotionally disturbed persons (EDPs)... A CEW should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present."

According to Patrol Guide Procedure 200-02, the NYPD is committed to "treating every citizen with compassion, courtesy, professionalism, and respect." Officers may use profanities "in the context of a dynamic situation over which [he or she is] attempting to gain control," but many not do so when it "[serves] no legitimate purpose but to belittle" a civilian (PD v. Pichardo, DAO DCT Case Number 2015-15012) (Board Review 15).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

[REDACTED]

§ 87(2)(g)

Allegation (P) Force – Sergeant Justin Dambinskas used a chokehold against § 87(2)(b)

Allegation (Q) Force – Sergeant Justin Dambinskas restricted § 87(2)(b) s breathing.

Allegation (R) Offensive Language – An officer made remarks to § 87(2)(b) based upon race.

Allegation (S) Discourtesy – Sergeant Justin Dambinskas spoke discourteously to § 87(2)(b)

Allegation (T) Abuse of Authority – Sergeant Justin Dambinskas threatened § 87(2)(b) with the use of force.

Allegation (U) Abuse of Authority – Sergeant Justin Dambinskas used physical force against § 87(2)(b)

§ 87(2)(b) stated that while he was being taken to a police vehicle, one officer wrapped an arm around his head, and another officer lifted his legs, causing his body to be suspended in the air. While § 87(2)(b) was mid-air, Sergeant Dambinskas grabbed § 87(2)(b) s neck with one hand and wrapped his other arm around § 87(2)(b) s chest. As a result, § 87(2)(b) s breathing was restricted for approximately eight to ten seconds. § 87(2)(b) caught his breath once he was inside the police vehicle. § 87(2)(b) then heard an officer say, “Get this nigger out of here,” but he did not know which officer said this. Sergeant Dambinskas opened the police vehicle’s door and said to § 87(2)(b) “Are you going to keep fucking around with us?” § 87(2)(b) began to yell to § 87(2)(b) and Sergeant Dambinskas said, “If you keep screaming, I am going to fuck you up.” § 87(2)(b) then began banging his head against the window, and Sergeant Dambinskas punched him in his face and in his ribs.

§ 87(2)(b) made no mention of these allegations in her statement to IAB.

Police Officer Gagnon stated that he did not remain with § 87(2)(b) after he was handcuffed. He denied saying, “Get this nigger out of here,” and he did not hear any officer say, “Get this nigger out of here,” “Are you going to keep fucking around with us,” or, “If you keep screaming, I am going to fuck you up.” Police Officer Gagnon was unaware of any officer punching § 87(2)(b) aside from himself, earlier in the incident.

Police Officer Miqueli believed § 87(2)(b) kicked an officer on his way to the police vehicle, and that § 87(2)(b) had to be lifted off the ground in order to be placed into the police vehicle. He acknowledged being one of the officers who placed § 87(2)(b) in the vehicle, and he stated that he transported § 87(2)(b) to the 113th Precinct stationhouse. However, he denied that any officer grabbed § 87(2)(b) by his neck or otherwise placed him in a chokehold. § 87(2)(b) did not have difficulty breathing or complain of such. Police Officer Miqueli denied that he or anyone else said, “Get this nigger out of here,” or, “If you keep screaming, I am going to fuck you up.” He did not recall whether Sergeant Dambinskas said, “Are you going to keep fucking around with us?” Police Officer Miqueli did not recall what § 87(2)(b) did after he was placed in the vehicle, and he stated that no officer punched § 87(2)(b) after he was placed in the vehicle.

The surveillance footage from § 87(2)(b) (Channel 2, Board Review 04) shows § 87(2)(b) offering continuous physical resistance until he is placed in the police vehicle. At runtime 00:06, § 87(2)(b) appears to jump onto the hood of another police vehicle while the officers are leading him towards the street. Shortly thereafter, a physical struggle ensues between § 87(2)(b) Sergeant Dambinskas, and numerous other officers against the hood of the marked SUV that § 87(2)(b) is ultimately placed inside of. At runtime 00:30, an officer is seen lifting § 87(2)(b)'s legs. However, the officers' bodies obstruct the camera's view of the remainder of § 87(2)(b)'s body, and it is unclear whether any officer grabs him by the neck or otherwise places him in a chokehold. After § 87(2)(b) is placed inside the police vehicle, at runtime 02:45, Sergeant Dambinskas is seen opening the rear driver side door of the vehicle, where § 87(2)(b) is seated, but what he does in this moment is unclear because his back is to the camera. He is not explicitly seen punching § 87(2)(b) or grabbing his neck at any point in this video. Officers also open the rear passenger side door, but what happens on the passenger side is not visible because the view of this area is blocked by the police vehicle.

No officer is heard saying anything akin to, “Get this nigger out of here,” “Are you going to keep fucking around with us?” or, “If you keep screaming, I am going to fuck you up,” in any of the videos obtained in this investigation.

Sergeant Dambinskas was unaware of any force being used against § 87(2)(b) after he was handcuffed. He did not recall whether he needed to use force to bring § 87(2)(b) to a vehicle, whether § 87(2)(b) was resisting as he was being taken to a vehicle, whether § 87(2)(b) was lifted off the ground, or what § 87(2)(b) did after he was placed in the vehicle. Sergeant Dambinskas denied grabbing § 87(2)(b) by his neck or otherwise placing him in a chokehold. He was unaware of § 87(2)(b)'s breathing appearing to be labored at any point, or of § 87(2)(b) complaining of such. Sergeant Dambinskas denied saying and hearing any officer say, “Get this nigger out of here,” He did not recall saying, “Are you going to keep fucking around with us?” and he denied saying, “If you keep screaming, I am going to fuck you up.” Sergeant Dambinskas denied punching § 87(2)(b)

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

In her statement to IAB, § 87(2)(b) stated that she attempted to stop the physical altercation between § 87(2)(b) and the officers, at which point Police Officer Lombardo punched her in the face. § 87(2)(b) asked Police Officer Lombardo for his name, and Police Officer Lombardo threw his business card at her face. § 87(2)(b) provided no additional details in this statement.

The surveillance footage from § 87(2)(b) (Board Review 03, 04, 05) shows that no officer punched § 87(2)(b) at any point. At runtime 02:18 of the footage from Channel 2 (Board Review 04), Police Officer Lombardo is seen attempting to hand a card to § 87(2)(b) who appears to attempt to grab it, but the hand-off is unsuccessful and the card falls onto the ground. At runtime 02:28, Police Officer Miqueli is seen handing another card to § 87(2)(b) who takes it from his hand.

§ 87(2)(g), § 87(2)(b)

Allegations Not Pleaded

- § 87(2)(b) stated that one of the officers damaged the front door's door frame, but he did not see this occur. None of the videos obtained show any officer attempting to forcibly open the front door of § 87(2)(b). § 87(2)(b) made no mention of her door being damaged. For these reasons, no Property Damaged allegation is pleaded against any officer.

Civilian and Officer CCRB Histories

- [illegible]

- § 87(2)(b) [REDACTED]
- This is the first CCRB complaint to which § 87(2)(b) [REDACTED] has been a party (Board Review 23).
- Police Officer Frank Gagnon has been a member-of-service for four years and has been a subject in two other CCRB complaints and two other allegations, neither of which were substantiated. § 87(2)(g) [REDACTED]
- Police Officer Jhoan Lozano has been a member-of-service for two years and has been a subject in two other CCRB complaints and four other allegations, none of which were substantiated. § 87(2)(g) [REDACTED]
- Police Officer Louis Wirth has been a member-of-service for four years and has been a subject in one other CCRB complaint and two other allegations, neither of which were substantiated. § 87(2)(g) [REDACTED]
- Police Officer Damien Lombardo has been a member of the NYPD for four years and has been a subject in one other CCRB complaint and one other allegation which was not substantiated. § 87(2)(g) [REDACTED]
- Police Officer Richard Miqueli has been a member of the NYPD for three years and has been a subject in one other CCRB complaint and one other allegation which was not substantiated. § 87(2)(g) [REDACTED]
- Police Officer Manuel Goico has been a member-of-service for four years and this is the first CCRB complaint to which he has been a subject.
- Sergeant Justin Dambinskas has been a member-of-service for 12 years and has been as subject in seven other CCRB complaints and nine other allegations, none of which were substantiated. § 87(2)(g) [REDACTED]

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of October 7, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 24).

§ 87(2)(b) [REDACTED]

§ 87(2)(b) [REDACTED]

§ 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

§ 87(2)(b), § 87(2)(c) (impair contract awards or CBAs)

Squad No.: 02

Investigator: _____

Signature	Print Title & Name	Date
-----------	--------------------	------

Squad Leader: _____

Signature	Print Title & Name	Date
-----------	--------------------	------

Reviewer: _____

Signature	Print Title & Name	Date
-----------	--------------------	------